

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

STEVEN RAY SMITH

CV. 08-557-HU

Petitioner,

ORDER

v.

HARDY MEYERS, et al.,

Respondents.

RANKIN JOHNSON  
714 S.W. 20<sup>th</sup> Place  
Portland, Oregon 97205

Attorney for Petitioner

JOHN R. KROGER  
Attorney General  
JACQUELINE KAMINS  
Assistant Attorney General  
Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096

Attorneys for Respondent

MARSH, Judge

Magistrate Judge Dennis J. Hubel issued a Findings and Recommendation (#26) on January 29, 2010. The Magistrate Judge recommended that Petitioner's Petition for Writ of Habeas Corpus (#1) should be dismissed for lack of jurisdiction.

Petitioner has filed objections through his counsel (#28). When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(B); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

The court has given the file of this case a *de novo* review, and has also carefully evaluated the Magistrate Judge's Findings and Recommendation, petitioner's objections, and the record of the case. The Findings and Recommendation is well-reasoned, without error, and adopted in its entirety.

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#### CONCLUSION

The Magistrate Judge's Findings and Recommendation (#26) in this action is ADOPTED. Petitioner's Petition for Writ of Habeas Corpus (#1) is DISMISSED, for lack of jurisdiction. This court also adopts the Magistrate Judge's recommendation to decline to issue a Certificate of Appealability on the basis that petitioner

has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). IT IS SO ORDERED.

DATED this \_19\_ day of FEBRUARY, 2010.

\_/s/ Malcolm F. Marsh\_\_\_\_\_  
Malcolm F. Marsh  
United States District Judge